

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GRILL CONCEPTS SERVICES, INC. D/B/A  
THE DAILY GRILL  
Employer

and

Case 31-RC-209589

UNITE HERE LOCAL 11  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Partial Decision on Objections and Notice of Hearing is denied as it raises no substantial issues warranting review.<sup>1</sup>

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<sup>1</sup> We have treated the Employer's Request for Review as also requesting review of the Regional Director's Decision and Direction of Election.

In Member McFerran's view, the facts found by the Regional Director strongly suggest that holding several staggered voting periods (instead of conducting a mail ballot election) would not have yielded more complete and reliable results here. As found by the Regional Director, most of the employees are part-time (51 out of 76), sometimes working only one day a week, and work on either the breakfast, lunch, or dinner shifts. Moreover, even employees scheduled for the same shift can have different start and end times. Further, the Regional Director found that 40% of the workforce is not scheduled to work "on any given day" and that more than 15% of the workforce is not scheduled during any 2-day period. In those circumstances, the Regional Director reasonably found that a manual election scheduled on a single day or even two consecutive days would disenfranchise a substantial percentage of the workforce. Last, although the Employer offered to schedule all employees to work on a particular day, so that a manual election could be scheduled on that day, the Regional Director reasonably concluded that this approach could negatively affect part-time employees who may have second jobs, familial duties, or school obligations. See *London's Farm Dairy, Inc.*, 323 NLRB 1057 (1997)(inconvenience to employees with conflicting obligations could cause resentment of the organizing campaign). In sum, this case appears to demonstrate the substantial benefits offered by the Board's current policy regarding mail ballot elections.

Member Emanuel finds, consistent with current Board precedent, that the Regional Director did not abuse her discretion by ordering a mail ballot election. But in his view, this case illustrates why the Board should consider revising its policy in this area to restrict mail ballot elections to cases where a manual election is not feasible. Here, although the employees' varied work schedules made a manual ballot election difficult, scheduling several voting sessions should have reasonably addressed the problem. Instead, the mail ballot process left nearly 30 percent of eligible voters (22 of 76) uncounted, followed by the current litigation. In Member Emanuel's view, a manual ballot election, which was certainly feasible, would have yielded more complete and certain results.

JOHN F. RING,	CHAIRMAN
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LAUREN McFERRAN,	MEMBER
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WILLIAM J. EMANUEL,	MEMBER
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Dated, Washington, D.C., August 3, 2018